

Johnston & Associates, LLC

2099 Pennsylvania Avenue, N.W., Suite 1000

Washington, D.C. 20006

Tel: (202) 659-8400 Fax: (202) 659-1340

January 13, 2004

Ms. Marlene Dortch
Secretary
Federal Communications Commission
445 Twelfth Street, SW
Washington, DC 20554

Re: Notice of Ex Parte Presentation in Nationwide Programmatic Agreement proceeding, WT Docket No. 03-128; FCC 03-125.

Dear Ms. Dortch:

On December 11, 2003, James T. Martin (Executive Director, USET), Ken Carleton (Vice Chairman, USET Culture and Heritage Committee), Eric Tober (Johnston & Associates) and Gregory Smith (Johnston & Associates), on behalf of the United South and Eastern Tribes, Inc. met with the following Commission staff: Gerald Vaughan, John Branscome, Jeff Steinberg, Geoffrey Blackwell, Frank Stilwell and Amos Loveday.

The discussion focused on USET's position that the FCC has two separate legal obligations under the National Historic Preservation Act relevant to tribal interests. The first obligation is to take into account the effects of FCC undertakings on properties of religious and cultural importance to tribes that are or may be eligible for the National Register. 16 U.S.C. Section 470f and Section 470a(d)(6)(A). The second, and completely distinct obligation is to consult with tribal governments to secure their official, governmental views regarding a proposed FCC undertaking that could affect such a tribal cultural and religious property. 16 U.S.C. Section 470a(d)(6)(B). USET further stated its position that, when it comes to meeting the first obligation, which requires the assessment of properties of religious and cultural importance to Tribes, Tribes have unique and special expertise for which compensation, as with other experts who provide their professional services, should be due.

USET representatives also indicated in the meeting that USET was looking for a "win-win" solution but if no such solution could be identified to the Tribes' satisfaction that there would be a need for the FCC and Tribes to consult on many tower sitings.

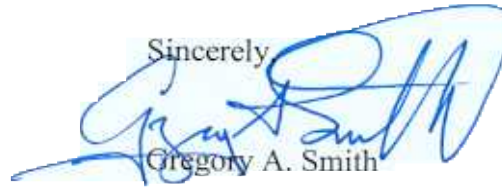
Subsequently, USET sent a letter to Mr. Vaughan dated December 22, 2003 that sets forth in detail USET's position on the "special expertise" of tribes. The letter to Mr. Vaughan has been separately submitted to the record of this proceeding. Among other things, the letter notes that ACHP regulations state that "agency official[s] shall

acknowledge that Indian Tribes and Native Hawaiian organizations possess special expertise when it comes to assessing the eligibility of historic properties that may possess religious and cultural significance to them.” 36 C.F.R. Section 800.4(c)(1). As with other experts used to evaluate these sites, tribal experts should receive fair compensation for their professional services. The letter also describes the central nature of consultation in the government-to-government relationship between tribes and the United States, citing the FCC’s own policy statement, as well as Executive Orders and the ACHP policy statement. These documents demonstrate that consultation involves meaningful interaction between the consulting parties.

The meeting continued after Mr. Vaughan left, but the discussion concerned a Best Practices document under development by the FCC in consultation with USET and not the draft Nationwide Programmatic Agreement.

If you have any questions regarding this matter, please feel free to call.

Sincerely,



Gregory A. Smith

cc: Keller George
James T. Martin
Ken Carleton